

UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

WELLS FARGO BANK, N.A., as Trustee
For the Holders of Bank of America
Commercial Mortgage Inc. Commercial
Mortgage Pass-Through Certificates,
Series 2004-4, by and through its
special servicer, ORIX CAPITAL
MARKETS, LLC,
Plaintiff,

v.

BERNARD WASSERMAN, DAVID WASSERMAN,
and RICHARD WASSERMAN,
Defendants.

C.A. No. 10-61 S

ORDER

The Report and Recommendation of United States Magistrate Judge David L. Martin filed on July 15, 2011 (hereinafter "R & R," ECF No. 50) in the above-captioned matter is hereby accepted pursuant to Title 28 United States Code § 636(b)(1). No objection to the R&R has been filed.

Plaintiff's Motion for Contempt, for Default Judgment and Dismissal for Failure to Comply with Court Order and for Attorneys' Fees ("First Motion for Contempt," ECF No. 33) and Plaintiff's Motion for Contempt and Entry of Default Judgment for Failure to Comply with Court Order Regarding Order to Compel Supplemental Responses to Second Request for Production and for Attorneys' Fees ("Second Motion for Contempt," ECF No. 35) will be treated as motions for sanctions pursuant to Fed. R. Civ. P.

37(b)(2)(C) and are hereby GRANTED for the reasons stated in Magistrate Judge Martin's July 15, 2011 R & R. Accordingly, the Court imposes the following sanctions:

1. For the violation of Defendants' discovery obligations addressed by the First Motion for Contempt (ECF No. 33), Defendants' Counterclaim is hereby DISMISSED.
2. For the violation addressed by the Second Motion for Contempt (ECF No. 35), Defendants are precluded from introducing or referring to any evidence, documents, or communications with or from Koffler Real Estate, LLC, or any affiliate thereof, regarding the purchase of 200 Frenchtown Road, North Kingstown, Rhode Island, in support of their Fifth and Eleventh Affirmative Defenses, as explained in further detail in the R & R dated July 15, 2011.

With respect to the award of attorney's fees recommended by Magistrate Judge Martin's July 15, 2011 R & R, the Court directs the Trustee to submit a proposed order detailing the attorney's fees incurred in bringing the First and Second Motions for Contempt (ECF Nos. 33 & 35).

IT IS SO ORDERED:

/s/ William E. Smith

William E. Smith
United States District Judge
Date: September 1, 2011